

Message Text

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ACTION EB-07

INFO OCT-01 IO-10 ISO-00 FEA-01 AGR-05 CEA-01 CIAE-00

COME-00 DODE-00 FRB-03 H-02 INR-07 INT-05 L-03 LAB-04

NSAE-00 NSC-05 PA-01 AID-05 CIEP-01 SS-15 STR-04

TAR-01 TRSE-00 PRS-01 SP-02 OMB-01 SSO-00 USIE-00

NSCE-00 INRE-00 FTC-01 /086 W
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TO SECSTATE WASHDC IMMEDIATE 6431

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FOR EB/CSB/BP, FTC AND JUSTICE

E.O. 11652: N/A

TAGS: UNCTAD, ETRD, ECON

SUBJECT: UNCTAD - GROUP OF EXPERTS ON RESTRICTED BUSINESS
PRACTICES

1. ON OCT. 22 UNCTAD GROUP OF EXPERTS ON RBPS SPLIT INTO TWO WORKING GROUPS. GROUP 1 IS RESPONSIBLE FOR IDENTIFICATION OF RBPS AFFECTING TRADE AND DEVELOPMENT. GROUP 2 DISCUSSED EXCHANGE OF INFORMATION AND CONSULTATION. THE LATTER DISCUSSIONS, WHICH ARE RELATIVELY NON-CONTROVERSIAL, CONTINUE TODAY.

2. GROUP 1 CONSISTED OF REPRESENTATIVES OF 6 DEVELOPED COUNTRIES, 5 LDCS AND SOVIET REP, UNDER LEADERSHIP OF OVERALL GROUP CHAIRMAN FROM PHILIPPINES FABELLO. USDEL REPRESENTED IN GROUP 1 BY DAVIDOW AND IN GROUP 2 BY FISCHBACK AND LOCKWOOD. GROUP 1 UNANIMOUSLY APPROVED FOR REFERRAL TO PLENARY A LIST OF RBPS. FULL TEXT OF LIST FOLLOWS: RESTRICTIVE BUSINESS PRACTICES WHICH MAY
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AFFECT TRADE AND DEVELOPMENT. (1) INTERNATIONAL CAR-

TELS. (A) AGREEMENTS AFFECTING THE PRICING OF EXPORTS AND IMPORTS; (B) COLLUSIVE TENDERING; (C) MARKET OR CUSTOMER ALLOCATION ARRANGEMENTS; (D) QUOTA SHARING ARRANGEMENTS; (E) COLLECTIVE ACTION TO ENFORCE ARRANGEMENTS - E.G. BY BOYCOTTS. (2) NATIONAL EXTERNAL TRADE CARTELS. (C) AGREEMENTS AFFECTING THE PRICING OF EXPORTS AND IMPORTS; (B) COLLUSIVE TENDERING; (C) MARKET OR CUSTOMER ALLOCATION ARRANGEMENTS; (D) QUOTA SHARING ARRANGEMENTS; (E) COLLECTIVE ACTION TO ENFORCE ARRANGEMENTS - E.G. BY BOYCOTTS. (3) DOMESTIC RESTRICTIVE PRACTICES. (A) PRICE FIXING, COLLUSIVE TENDERING, RESALE PRICE MAINTENANCE, REBATE AND OTHER COLLUSIVE ARRANGEMENTS; (B) COLLECTIVE BOYCOTTS OF DEALTERS. (4) ACQUISITION OF OR ABUSE OF A DOMINANT POSITION OR ACTS OF UNFAIR COMPETITION BY: (A) EXCLUSIVE DEALING, AND ANTI-COMPETITIVE REFUSALS TO DEAL; (B) TIED SALES OR PURCHASES; (C) PREDATORY OR DISCRIMINATORY PRICING WHETHER ACCOMPLISHED BY TRANSFER PRICING OR OTHERWISE; (D) MERGERS, TAKEOVERS, OR OTHER ACQUISITIONS OF CONTROL OF A HORIZONTAL, VERTICAL AND CONGLOMERATE NATURE; (E) TERRITORIAL MARKET AND PRODUCT ALLOCATION; (F) DOMINANT JOINT VENTURES PROVIDING INSUFFICIENT ACCESS. FOOTNOTE: THE EXPERTS UNDERSTOOD THAT THESE PRACTICES COVER THE SITUATION WHEN THEY ARE ENGAGED IN BY PRIVATE OR PUBLIC ENTERPRISES AND WHEN THEY RELATE TO TITHE GOODS OR SERVICES.

3. INTRODUCTORY PARAGRAPH IN DRAFT STAGE BUT ESSENTIALLY WOULD SAY THAT DOCUMENT IS INTENDED TO BE ALL-INCLUSIVE LIST OF PRACTICES CONTROLLED UNDER RBP LEGISLATION. THREE POINTS WOULD FOLLOW: (A) SOME PRACTICES ARE EXEMPTED, E.G. EXPORT CARTELS AND RESALE PRICE MAINTENANCE; (B) MOST ARE TO BE TREATED UNDER RULE OF REASON OR ABUSE PRINCIPLE; AND (C) SOME (EMG. HORIZONTAL ACTIVITIES) ARE PROHIBITED IN PRINCIPLE.

4. THIS LIST OF RBPS, IF APPROVED, WILL BE PUBLISHED AND DISTRIBUTED BY UNCTAD. IT IS UNCLEAR WHAT SUBSEQUENT USE MAY BE MADE OF IT OR WHAT IMPACT IT WILL LEAVE. ITS IMMEDIATE PURPOSE IS FOR IDENTIFICATION LIMITED OFFICIAL USE

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PURPOSES, AND AS BACKGROUND FOR WORK ON CONSULTATION, MODEL LAW, OR MULTILATERALLY ACCEPTABLE PRINCIPLES OR CODE. GROUP OF 77 HAS EXPRESSED STRONG SUPPORT FOR OBLIGATORY CODE.

5. STATE AND FTC REPS HAVE SERIOUS RESERVATIONS ON SUBSTANCE OF SOME ITEMS IN THE LIST, AND ARE CONCERNED ABOUT FUTURE IMPLICATION WITHIN UNCTAD CONTEXT. OUR

CONCERN IS THAT G-77 MEMBERS MAY SELECTIVELY UTILIZE THIS LIST TO BOLSTER AND ADD LEGITIMACY TO IMPLEMENTATION OF POLICIES WHICH COULD AFFECT U.S. INTERESTS. DOCUMENTATION AND DISCUSSIONS THUS FAR REVEAL THAT UNCTAD DESIRES PLAY SIGNIFICANT ROLE IN THIS FIELD. IT IS POSSIBLE THAT THE ABOVE WORKING PARTY 1 DOCUMENT WILL BECOME THRESHOLD FOR FUTURE PROGRAMS.

6. USDEL REPRESENTATIVE IN WORKING GROUP 1 BASICALLY SUPPORTED DOCUMENT AS REPRESENTING OBJECTIVE DEFINITION AND IDENTIFICATION OF RBPS, BASED ON ESTABLISHED U.S. AND EUROPEAN LAW AND PRINCIPLES. MOREOVER, LIST AS WRITTEN IS BROAD IN SCOPE, WITH APPLICATION TO PUBLIC ENTERPRISES AND TO CARTELS REGARDLESS OF ORIGIN AND MEMBERSHIP. IN BOTH OF THESE SENSES, DOCUMENT REPRESENTS POSITIVE STATEMENT.

7. GIVEN ABOVE SITUATION, WE WOULD APPRECIATE GUIDANCE ASAP BEFORE ADOPTING FINAL U.S. POSITION. REGRET LATENESS OF THIS REQUEST, BUT RESULTS OF WORKING PARTY 1 NOT REVEALED UNTIL LATE ON OCT. 22. PLENARY TO CONSIDER MATTER THIS AFTERNOON WITH FINAL ACTION TO BE TAKEN ON OCT. 24. REPRESENTATIVE OF USEKW WILL TELEPHONE LATE TODAY, BUT WOULD APPRECIATE CABLE REPLY NOT LATER THAN FRIDAY MORNING. ABRAMS

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